

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 19-0351V

UNPUBLISHED

ELIZABETH LEVINE,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 21, 2020

Special Processing Unit (SPU);  
Ruling on Entitlement; Concession;  
Table Injury; Influenza (Flu) Vaccine;  
Shoulder Injury Related to Vaccine  
Administration (SIRVA)

*Jessica E. Choper, Britcher Leone, L.L.C., Glen Rock, NJ, for petitioner.*

*Colleen Clemons Hartley, U.S. Department of Justice, Washington, DC, for respondent.*

### **RULING ON ENTITLEMENT**<sup>1</sup>

On March 8, 2019, Elizabeth Levine filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a right shoulder injury related to vaccine administration (“SIRVA”), including a right rotator cuff tear and subacromial impingement, as a result of an influenza (“flu”) vaccine received on October 31, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On May 12, 2020, Respondent filed his Rule 4(c) report in which he concedes that Petitioner is entitled to compensation in this case for SIRVA, including

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<sup>1</sup> Because this unpublished ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

impingement.<sup>3</sup> Respondent's Rule 4(c) Report at 1. Specifically, Respondent agrees that Petitioner had no recent history of pain, inflammation, or dysfunction of her right shoulder, pain occurred within 48 hours after receipt of an intramuscular vaccination, pain was limited to the shoulder where the vaccine was administered, and no other condition or abnormality, such as brachial neuritis, has been identified to explain Petitioner's shoulder pain. *Id.* at 5. Respondent further agrees that Petitioner has suffered the residual effects of her condition for more than six months and has satisfied all legal prerequisites for compensation under the Act. *Id.*

**In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation for SIRVA, including impingement.**

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> Respondent states that he does not believe Petitioner is entitled to compensation for her claimed right rotator cuff repair. Rule 4(c) Report at 1, 5 n.3.